



# USAID | PAKISTAN

FROM THE AMERICAN PEOPLE

December 17, 2009

Mr. Javed Iqbal  
Chief Secretary, NWFP  
Civil Secretariat  
Peshawar, NWFP, Pakistan

**Subject: Implementation Letter No. MLK-01:  
Malakand Reconstruction and Recovery Program**

**Reference:** Assistance Agreement for the Implementation of Emergency Supplemental Funding (No. 391-011), dated September 30, 2009, between the Islamic Republic of Pakistan and the United States of America acting through the United States Agency for International Development ("USAID") (the "Assistance Agreement")

Dear Mr. Iqbal,

**1. Introduction:** In furtherance of the purposes specified in the Assistance Agreement, the Government of Pakistan, acting through the Government of the North-West Frontier Province (the "Government of NWFP") and USAID shall carry out a program of reconstruction and recovery (the "Activities") in the Malakand Division. Except as expressly provided in Section 11 herein, this Implementation Letter ("IL"), issued in accordance with Section A.2. of Annex 2 to the Assistance Agreement, does not modify the Assistance Agreement. This IL also provides additional information to help implement the Activities.

**2. Purpose:** The activities contemplated for support under this IL address needs in the education, health and water sectors in the Malakand Division.

Attachment 1, Amplified Program Description, describes the Activities covered under this IL. Subsequent ILs will commit funds for specific agreed Activities and set forth in detail the engineering specifications, reimbursement arrangements, and such other details as may be agreed.

**3. Total Estimated USAID Contribution:** USAID and the Government of NWFP anticipate utilizing \$36,000,000 out of the funds obligated under the Assistance Agreement as USAID's initial contribution to implementation of the Activities described in Attachment 1. The overall Financial Plan for the Activities under this IL, denoted in U.S. Dollars, is set forth in Table 1 attached hereto.

**4. Completion Date:** It is anticipated that all Activities will be finished within 36 months of the signature of this IL.

**5. Representatives:** For the purposes relevant to the implementation of the Activities, and pursuant to Section 7.2 and Annex 1, Section V.A of the Assistance Agreement, the Government

of Pakistan will be represented by the person holding the office of the Chief Secretary to the Government of NWFP and USAID shall be represented by the individual holding or acting in the office of Director of the USAID Mission to Pakistan.

**6. Oversight, Planning and Approval:** The Government of NWFP will establish a Project Steering Committee to provide oversight, guidance and approvals required for smooth and timely implementation of the Activities. The Project Steering Committee will be chaired by the Director General of the Provincial Relief, Reconstruction and Settlement Authority (PaRRSA), and will be comprised of representatives from USAID/Pakistan and relevant Provincial Departments involved in the planning and implementation of the Activities. The Committee will meet at least quarterly to, among other things, review implementation progress, provide necessary approvals within the scope of their authority and resolve coordination issues.

USAID will monitor, evaluate and verify activity implementation through its Mission staff or use third parties to monitor, evaluate and verify all USAID projects funded under this IL. These parties will visit sites, take pictures, interview community members, and compare reports to the on-the-ground realities for a given project.

## **7. Methods of Payment:**

### **A. Fixed Amount Reimbursement**

Payment for certain Activities will be made by the Fixed Amount Reimbursement (“FAR”) method. FAR is a U.S. Government assistance mechanism whereby the host government implementing agency is reimbursed a fixed amount by USAID for the successful completion of specified activities in accordance with previously agreed upon specifications or standards. The amount of reimbursement is fixed in advance based upon reasonable cost estimates reviewed and approved by USAID and therefore may exceed or fall short of actual cost incurred to complete an Activity. The amount of USAID’s contribution to the total project will be controlling. If unforeseen cost increases are encountered, these will be borne by the Government of NWFP. If costs are less than those estimated, USAID’s contribution will not be reduced. In all cases, payment by USAID will be made only when USAID staff confirm completion according to agreed specifications. Information about the use and requirements of a FAR arrangement is set forth in Attachment 2 to this IL.

### **B. Host Country Contracting**

The Government of NWFP and USAID intend to utilize Host Country Contracting (“HCC”) in connection with the implementation of certain of the Activities. HCC entails USAID procurement regulations for contracts and transactions entered into by the Government of NWFP. The Government of NWFP, acting directly or through designated implementing agencies, contracts for goods and services required to implement projects financed under bilateral agreements. A summary of USAID’s HCC regulations is contained in Section C.9 of Annex 2 of the Assistance Agreement. The Government of NWFP’s procurement system would need to include certain procedures for competition, the highlights of which are set forth in Attachment 3 to this IL. Also set forth in Attachment 3 is a detailed description of the HCC procedures (with respect to competition and other requirements). The Government of NWFP



will be responsible for procuring such goods and services in accordance with USAID's procedures. As needed, subsequent ILs will be used to provide additional detail regarding the implementation of the Activities.

C. Reimbursement for Expenditures under this IL

USAID may provide funding to the Government of NWFP to cover certain of its costs (as agreed between the parties) in connection with its implementation of the Activities. Such costs may include procurements for goods and services of less than \$100,000 in value, but will not include the payment of salary supplements for GOP employees. As needed, separate ILs under this IL will be used to provide additional detail regarding the implementation of the Activities (including the payment of eligible costs). When requesting reimbursement, the Government of NWFP, acting through its duly authorized representative, will submit to USAID a monthly voucher detailing and documenting expenses.

**8. Pre-Award Assessments:** Prior to the provision of project funding to a Government of Pakistan entity for implementation of the Activities through the methods described above, USAID will conduct an assessment of the administrative and financial management systems and the procurement procedures of each participating Government of Pakistan entity. The assessment will include steps such as a test of the application of procurement procedures, a review of their compatibility with USAID procedures and their capacity to adapt procedures as necessary to comply with USAID procurement procedures. Until USAID has determined that the relevant Government of Pakistan entity has the management capacity to adequately safeguard USG resources, USAID-funded contractors will be retained to assist the relevant Government of Pakistan entities with financial management and/or procurements to be financed by USAID.

**9. Restriction on Use of Funding:** None of the funding covered by this IL may be provided to any official of the Government of Pakistan, including the Government of NWFP or other level of government, in connection with the procurement of goods or services relating to the Activities, nor will any Government of Pakistan employee or agent solicit or accept gratuities, favors or anything of monetary value from contractors or parties to sub-agreements, except service fees or similar payments legally established in Pakistan. The Government of NWFP will provide written notification of this prohibition to each governmental entity, recipient community and contractor/grantee, and shall provide written notice to USAID confirming the distribution of such notices. In addition, no funds under this IL will be used for the payment of salary supplements for Government of Pakistan employees.

**10. Designation of Accounts:** In connection with the implementation of these Activities, USAID intends to directly reimburse the Government of NWFP the agreed upon amount of the USAID contribution for each Activity that is satisfactorily completed. The Government of NWFP shall inform USAID of the account information for the applicable implementing entity. USAID reserves the right to audit the designated account with respect to any transactions relating to the Activities.



## 11. Standard Provisions:

*Taxation.* In accordance with Section B.4 (*Taxation*) of Annex 2 of the Assistance Agreement, this grant and purchases financed with grant funds shall be free from any taxation or fees, including value added taxes (such as sales tax, excise duties and custom duties) imposed under laws in effect in Pakistan.

*Reports, Information and Audits.* In accordance with Section B.5 (*Reports and Information, Agreement Books and Records, Audits, and Inspections*) of Annex 2 of the Assistance Agreement, the Government of NWFP shall furnish USAID accounting records and any such other information and reports relating to this IL as USAID may reasonably request.

USAID retains the right to perform the audits required under this IL on behalf of GOP by utilizing funds under this IL or other resources available to USAID for this purpose, conduct a financial review, or otherwise ensure accountability of organizations expending USAID funds regardless of the audit requirement.

*Refunds.* In accordance with Section F.2 (*Refunds*) of Annex 2 of the Assistance Agreement, USAID will require the Government of NWFP to refund the amount of a disbursement in U.S. dollars to USAID for events of non-compliance, such as in the case of any utilization of grant proceeds for Activities which are not supported by valid documentation, or which are not used in accordance with the Assistance Agreement or this IL.

*Other Standard Provisions.* All of the other Standard Provisions of Annex 2 of the Assistance Agreement are also applicable to the Activities except as follows:

With respect to any Activity to be financed through the FAR method, Section C.3 of Annex 2 is replaced in its entirety with the following:

“Prior to the issuance of an IL committing funds for a specific Activity or Activities, the Grantee will furnish to USAID such plans, specifications and cost documents as USAID deems necessary to establish the reimbursement cost and reimbursement requirements for such Activity or Activities. Such documentation may be incorporated into the ILs committing funds for a specific Activity or Activities as appropriate.”

**12. Public Recognition:** The Government of Pakistan and the Government of NWFP will work with USAID to maximize, to the extent possible, broad public awareness of the programs and activities funded by USAID under this Implementation Letter, including by making this Implementation Letter publicly available via appropriate Government of Pakistan and United States Government Intranet web sites. The Government of NWFP will use all print and electronic media to publicize the programs and activities, and organize appropriate public ceremonies and events to highlight major milestones and accomplishments. All construction and reconstruction activities, in particular, should prominently display, unless USAID otherwise agrees in writing: (1) appropriate temporary signage during the construction or reconstruction phase, and (2) a permanent plaque with the seal of the Islamic Republic of Pakistan and the USAID logo to recognize the partnership between the peoples of Pakistan and the United States.

**13. Communications:** Any notice, request, document or other communication submitted by either Party under this IL will be in writing sent by letter, telefax or electronic mail ("e-mail"), and will be deemed duly given or sent when delivered to such party at the following address:

To Government of NWFP: Chief Secretary, NWFP  
Civil Secretariat  
Peshawar, NWFP, Pakistan  
Telefax: 051-921-0447  
Email: jayeyesc@yahoo.co.uk

To USAID: Director  
USAID Mission to Pakistan  
American Embassy  
Diplomatic Enclave  
Ramna 5, Islamabad, Pakistan  
Telefax: 051-287-0310  
Email: InfoPakistan@usaid.gov

*[Signature Page Follows]*

We respectfully request your signature below. In doing so, this will constitute the concurrence of the Government of Pakistan with the above procedures.

Sincerely,

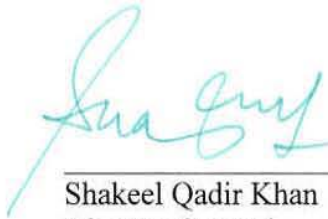


Robert J. Wilson  
Director  
USAID Mission to Pakistan

Concurrences:

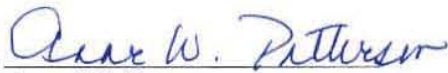


Javed Iqbal  
Chief Secretary  
North-West Frontier Province



Shakeel Qadir Khan  
Director General  
Provincial Disaster Management  
Authority/Provincial Relief, Rehabilitation  
and Settlement Authority

Honorary Witnesses:



Anne W. Patterson  
U.S. Ambassador, Pakistan



Ameer Haider Khan Hoti  
Chief Minister  
North-West Frontier Province

Copy to:

Mr. Sibtain Fazal Halim  
Secretary  
Economic Affairs Division  
Block C, Pak Secretariat  
Islamabad, Pakistan

## **Attachments**

Table 1: Illustrative Financial Plan

Attachment 1: Amplified Program Description

Attachment 2: Fixed Amount Reimbursement

Attachment 3: Description of Host Country Contracting

**Table 1**  
**Illustrative Financial Plan**

<b>S.No.</b>	<b>Sectors</b>	<b>Amount (in U.S. dollars)</b>
1	Rehabilitation/Reconstruction of Schools	20,000,000
2	Recovery, Staffing and Supplies for the NWFP Department of Health	12,000,000
3	Water and Sanitation Activities	3,000,000
4	Enhancing Government Capacity	1,000,000



**ATTACHMENT 1**  
**AMPLIFIED PROGRAM DESCRIPTION**  
**POST-CONFLICT RECONSTRUCTION AND RECOVERY IN THE MALAKAND DIVISION**

**DESCRIPTION OF ACTIVITIES**

**Rehabilitation/Reconstruction of Schools:** USAID/Pakistan intends to provide funding for the rehabilitation and reconstruction of damaged school facilities as indicated in the Illustrative Financial Plan. The specific facilities to be rehabilitated or rebuilt will be mutually agreed upon between the Government of NWFP, represented by the Provincial Relief, Rehabilitation and Settlement Authority (PaRRSA), and USAID/Pakistan, acting jointly through the Project Steering Committee. Funds for Activities under this component will be committed, and construction specifications and standards to be followed will be documented, in separate ILs between the Chief Secretary of NWFP and USAID/Pakistan.

**Recovery, Staffing and Supplies for the NWFP Department of Health:** USAID/Pakistan intends to provide funding to finance maternal and child health interventions including, but not limited to: recruitment and retention of skilled medical and health staff, rehabilitation and renovation of damaged health facilities and staff residences; subject to applicable USAID regulations, provision of medical equipment, supplies, contraceptives, vaccines, medicines, and other commodities including ambulances; support for logistical costs such as fuel, generators, and staff costs for medical outreach or mobile services to camps and communities. Within the scope of activities that have been approved for USAID funding, the specific details and procedures for implementation will be determined by the NWFP Department of Health in consultation with USAID/Pakistan, with final approval being given by the Project Steering Committee. Funds for Activities under this component will be committed, and construction specifications and standards to be followed will be documented, in separate ILs between the Chief Secretary of NWFP and USAID/Pakistan.

**Water and Sanitation Activities:** USAID/Pakistan intends to provide funding to finance water and sanitation activities, including, but not limited to: reconstruction of damaged water and sanitation systems, including in schools and health facilities; construction of water filtration plants; and provision of point-of-use drinking water disinfectants to Internally Displaced Persons (IDP) populations as well as in particularly affected host communities. It is expected that the NWFP Works and Services Department, Tehsil Municipal Administrations, Water and Sanitation Agency and other relevant authorities will be involved in the design and implementation of these activities. Within the scope of activities that have been approved for USAID funding, the specific details and procedures for implementation will be determined by the NWFP Department of Health in consultation with USAID/Pakistan, with final approval being given by the Project Steering Committee. Funds for Activities under this component will be committed, and construction specifications and standards to be followed will be documented, in separate ILs between the Chief Secretary of NWFP and USAID/Pakistan.

**Enhancing Government:** USAID/Pakistan intends to provide funding under this program to enable the Government of NWFP to contract with a local firm or institution to recruit, retain, and deploy additional staff as needed by Provincial authorities to carry out the program funded under this IL. Within the scope of activities that have been approved for USAID funding, the specific



details and procedures for implementation of this program element will be determined by the Government of NWFP in consultation with USAID/Pakistan, with final approval being given by the Project Steering Committee. The agreed upon mechanism will be documented in a separate IL between the Chief Secretary of NWFP, PaRRSA and USAID/Pakistan.

### **COORDINATION OF PLANNING AND IMPLEMENTATION**

As stipulated in this IL, the Government of NWFP will establish a Project Steering Committee to provide overall guidance and approvals required for the smooth and timely implementation of this program. The Project Steering Committee, chaired by the Director General of PaRRSA, will be comprised of representatives from all Departments involved in the planning and implementation of the activities described above as well as USAID/Pakistan. The Committee will meet at least quarterly to review implementation progress, provide necessary approvals, and resolve coordination issues.

### **SOCIAL MOBILIZATION**

Social mobilization is an integral and cross-cutting component of reconstruction and recovery activities. Engaging communities in the identification, design and implementation of activities is essential to obtain ownership and ensure sustainability.

As needed and requested by the Government of NWFP and PaRRSA, USAID through its implementing partners may support the social mobilization components for reconstruction and recovery activities, including the rehabilitation or reconstruction of schools and healthcare facilities, water and sanitation systems and other small- to medium-scale community infrastructure projects.

### **MONITORING AND EVALUATION**

Due diligence reviews of US-funded activities through program monitoring and evaluation is fundamental to reporting on progress and the quality of the work performed. USAID through its Mission staff and implementing partners may provide monitoring and evaluation support services to all activities listed above. USAID expects that both the Government of NWFP and USAID will undertake rigorous monitoring and evaluation of activities funded under this IL.

It is USAID's understanding that the monitoring and evaluation effort of the Government of NWFP will be led by PaRRSA, according to processes and procedures previously established. USAID recognizes that additional staff and resources may be required to implement a thorough monitoring and evaluation effort. Funds provided under the section "Enhancing Government" of this IL may be used for such purposes.

USAID may enter into monitoring, evaluation and verification agreements with third parties to monitor, evaluate and verify all USAID projects funded under this IL. This includes the retention of site engineers to conduct quality control assessments and verify that agreed upon standards are being met. These parties will visit sites, take pictures, interview community members, and compare reports to the on-the-ground realities for a given project. In addition, these parties will:

- Create a monthly monitoring plan
- Coordinate site visits with PaRRSA and the relevant implementing department
- Conduct the site visits to obtain data and photographs from the site

- Prepare monitoring reports
- Share findings with PaRRSA and the relevant implementing department
- Report to USAID

#### **ENVIRONMENTAL COMPLIANCE**

All Activities shall comply with U.S. Federal Law mandates for an Initial Environmental Examination, Request for Categorical Exclusion, Environmental Assessment (if needed), or other appropriate action under the USAID Environmental Procedures promulgated in 22 CFR 216 before the obligation of funds, and documentation shall incorporate appropriate mandatory conditions for disbursement as stipulated in 22 CFR 216 and Automated Directives Systems 204. As needed, USAID will provide training to the implementing agency on these regulations and procedures.

#### **SOURCE, ORIGIN AND NATIONALITY OF GOODS AND SERVICES**

Funds covered by this IL may be used to finance the procurement of goods and services of “special free world” (Geographic Code 935) source and origin, which includes Pakistan and any other area or country (other than foreign policy restricted countries). Procurement of Pakistani goods and services should be undertaken to the extent practicable to help support and build the capacity of local businesses and organizations.



## **ATTACHMENT 2**

### **FIXED AMOUNT REIMBURSEMENT**

A Fixed Amount Reimbursement Agreement (FARA) is a USAID assistance mechanism whereby a host government is reimbursed by USAID for the successful completion of specified activities in accordance with previously agreed upon specifications or standards. The amount of reimbursement is fixed in advance based upon reasonable cost estimates reviewed and approved by USAID.

USAID has successfully employed the FARA mechanism in an array of projects worldwide. They are most appropriate for low cost, short-term projects (generally two years or less), or projects which can be made divisible into segments small enough to enable the completion of subprojects or quantified elements of work within the project.

Set forth below are the USAID requirements for FARAs.

#### **A.     General:**

FARA financing is a form of project assistance under which the amount of reimbursement is set in advance, based upon cost estimates approved by USAID. As a prerequisite for utilization of the FARA mechanism, USAID is required to ensure that the recipient organization has:

- 1) sufficient qualified staff and experience to effectively implement projects that employ the FARA mechanism;
- 2) sufficient financial resources to finance all projects which are the subject of a FARA; and,
- 3) a procurement system in place that can effectively execute procurements for the required services, including construction services, as more fully described in subparagraph C., below.

Each project to be financed under a FARA under this Implementation Letter will be the subject of a written FARA agreement under which USAID project funds will be used to reimburse the GOP, Government of NWFP, or other implementing organization for satisfactorily completed elements of work. Subprojects or quantified elements of work should be self-sustaining units (i.e., have independent, stand-alone value) that will be useful and desirable in their own right, regardless of whether other subprojects or elements of work are completed.

The total amount of the USAID reimbursement under a FARA agreement shall be fixed in advance based upon reasonable cost estimates reviewed and approved by USAID and upon the satisfactory, physical completion of an agreed upon project or subproject or a quantifiable element of work within the project. This means that USAID reimbursement under a FARA shall not be based on actual costs incurred by the implementing organization. As USAID reimbursement is based upon satisfactorily completed projects, subprojects, or quantifiable element of work within the project rather than actual costs, savings from the estimated cost amounts set forth in the FARA will accrue to the implementing organization.

Correspondingly, if unforeseen cost increases are encountered by the implementing organization under a project, subproject or a quantifiable element of work within the project, these costs will be borne solely by the implementing organization.

B. Design and Engineering Supervision:

An independent engineer or engineering firm will be used to, among other things, monitor construction projects to ensure that the work meets the required technical specifications, assist the implementing organization with project design and development of technical specifications, if needed, and provide certifications of completion for FARA projects, subprojects or quantified elements of work.

The implementing organization shall notify USAID and the engineer of the completion of each project, subproject, or quantified element of work. As noted above, the engineer will inspect and provide the implementing organization a certification of completion for satisfactorily completed projects, subprojects, or quantified elements of work, as a condition precedent to reimbursement. The engineer will provide USAID with a copy of all certifications. If work is not completed satisfactorily, the engineer will immediately notify the implementing organization of the basis of the decision, with a copy to USAID.

C. Reimbursement Method:

The implementing organization will use its own funds to implement all projects under the program. USAID reimbursement shall be based solely upon the satisfactory, physical completion of a project or subproject or a quantifiable element of work within a project as stated in the FARA. It is therefore particularly important that the implementing organization guarantee that the projects are implemented in accordance with agreed project design and technical specifications set forth in a FARA agreement. This will not only help to avoid conflicts between USAID and/or the engineer and the implementing organization, but may also serve to avoid conflicts between the implementing organization and its project implementation contractors.

Accordingly, USAID and/or the engineer, a USAID construction management services contractor, will monitor project construction and conduct periodic inspections of the project to ensure that a project is being implemented in accordance with the agreed terms and technical specifications set forth in the FARA, and to facilitate final inspection and certification of satisfactorily completed work by the engineer.

USAID reimbursement shall only be made following the engineer's issuance of a certification to the implementing organization, with a copy to USAID, stating that the work was satisfactorily completed. Thereafter, USAID will reimburse the implementing organization in the amount set forth in the FARA for the completed agreed upon project, subproject or quantified element of work satisfactorily completed.



D. FARA Construction Services Procurement Requirements:

USAID is required to determine that the implementing organization has sound procurement procedures and systems in place capable of managing required procurements, and that free and open competition procedures are in place and followed in accordance with established policy.

E. Additional FARA Criteria:

1. The completion date of a project shall not extend beyond two (2) years from the date of execution of the FARA. Subprojects or quantified elements of work should be completed within twelve (12) months of start of work on the subproject or quantified element of work and shall be self-sustaining units, as outlined in Subparagraph A, above.
2. Linkage to reconstruction and recovery efforts (“Activities”) in the Malakand Division as described for the Activities in Attachment 1, “Amplified Program Description.”
3. The implementing organization shall afford authorized representatives of USAID (and its designees) the opportunity at all reasonable times to audit or inspect activities financed under the FARA agreement, the utilization of goods and services financed by USAID, and the books, records and other documents relating to the FARA agreement.



## **ATTACHMENT 3**

### **HOST COUNTRY CONTRACTING**

#### **OVERVIEW PROCURMENT REQUIREMENTS**

Below are the highlights of the procurement procedures that the Government of Pakistan contracting agency's system would need to include:

- Contracts for the procurement of goods and services with USAID financing shall be awarded on the basis of competitive procedures (either formal or informal depending on amount and type of award).
- For contracts for goods in excess of \$100,000, formal competitive bidding procedures should be used in the award of the contracts. This includes public advertising, issuance of invitations for bids, public opening of sealed bids, evaluation of bids, and award of contract to lowest responsive and responsible bidder.
- Contracts for technical and professional services with estimated value in excess of \$100,000, the selection of the prospective contractor (i.e., firm or other organization) who will provide services, must be based on professional qualifications required to undertake the activity. Cost negotiations should take place after selection of highest-ranked technical proposal.
- For contracts where estimated value does not exceed \$100,000, informal competitive procedures may be used for the procurement, but should include the solicitation of a reasonable number of potential suppliers.
- Contracts for technical and professional services where estimated value does not exceed \$100,000, informal solicitation of several sources is generally required.
  - o Negotiation may be undertaken without a written solicitation or tendering document.
  - o Advertising not required unless: (1) fee for service under contract is expected to exceed \$25,000; or (2) the total value of the procurement is expected to exceed \$100,000.
- For contracts where estimated value does not exceed \$2,500, procuring agency should consider the following in making an award: proposed price is reasonable; and purchases should be distributed equitably among qualified suppliers.
- For contracts for technical and professional services to be performed by an individual:
  - o Consideration of reasonable number of candidates is recommended.
  - o Award made based on evaluation of professional qualifications, negotiation and reasonable cost.
- Procuring agency to retain documentation of nature and extent of competition in files.

In connection with contracts exceeding \$100,000, USAID approval of certain bidding procedures is required, such as:

- the complete solicitation or tendering document, prior to issuance, including the contractor selection method and selection criteria;
- the selection of the successful contractor;
- any decision to terminate negotiations with the highest-ranked offeror and commence negotiations with another offeror or reject all offers;
- the contract, prior to execution; and
- contract administrative actions, such as subcontracts, amendments and change orders.

### **ADDITIONAL USAID GUIDANCE ON HOST COUNTRY CONTRACTING**

#### **ADS Chapter 305 - HOST COUNTRY CONTRACTS**

The text below has been revised slightly for application to programs in Pakistan. The exact and complete text of the chapter can be found at the following link:

<http://www.usaid.gov/policy/ads/300/305.pdf>

#### **305.2 Objective**

The objective is to obtain maximum utility from USAID-financed host country contracting when implementing bilateral assistance (other than Commodity Import Programs, contracting by intermediate credit institutions, or contracting restricted to local sources.) (USAID policy on the criteria for using host country contracting and the procedures used in determining, usually during activity design, to implement activities by host country contracting is found in Chapter 301. (See Mandatory Reference, ADS 301)

In the event of any inconsistency between this Chapter and any Mandatory Reference material addressed in it, this Chapter shall take precedence.

#### **305.3 Responsibility**

1. The Assistance Objective team is responsible for ensuring that activities are designed to assign the responsibility for procurement where it will best serve the objective. When host country contracting is going to be used, an assessment of the Contracting Agency's procurement system is made. (See Mandatory Reference, ADS 301.5.2)

2. The Mission or regional contracting officer, controller, and legal advisor are responsible for assessing the Contracting Agency's procurement system as part of the host country assessment team, or for reviewing the assessment and offering recommendations before

the Mission Director certifies that the Contracting Agency's procurement system is acceptable; and for serving on the Mission Noncompetitive Review Board for single source procurements over \$250,000. (See Mandatory Reference, ADS 301.5.2 and ADS E305.5.2f)

3. The Mission Engineer and Commodity Management Officer are responsible for participating in the host country assessment when their areas of expertise are involved. (See Mandatory Reference, ADS 301.5.2)

4. The Mission controller is responsible for ensuring that the Contracting Agency's accounting system and internal controls are adequate. (See Mandatory Reference, ADS 301.5.2)

5. The Mission or regional Contracting Officer is responsible for the following: (See Mandatory Reference, ADS 301.6)

- Monitoring the selection and award process.
- Clearing on USAID approvals of the significant steps in the contracting process.
- Furnishing a USAID observer of host country source selection panels.

6. The USAID Competition Advocate is responsible for clearing the approval of single source, (See E305.5.2f)

7. The Mission Director, or the Assistance Objective Team Leader to the extent that the authority has been appropriately redelegated, is responsible for:

- Reviewing the recommendations of the host country assessment team and for certifying the acceptability of the Contracting Agency's procurement system if the facts support doing so. (See Mandatory Reference, ADS 301.5.2)
- Approving single source negotiated procurement estimated to cost \$5 million or less. (See E305.5.2f 1)
- Approving the various steps of the contracting process for procurements estimated to be in excess of \$250,000. (See E305.5.1e)
- Approving source and nationality waivers, per Regional Assistant Administrator relegation.
- Waiving marking requirements. (See Mandatory Reference, ADS 320.3.6)



8. Regional Assistant Administrator: The Regional Assistant Administrator is responsible for the following:

- Approving single source negotiated procurement estimated to exceed \$5 million in value. (See E305.5.2f)
- Approving source and nationality waivers. (See Mandatory Reference, ADS 103.3.8.3)
- Waiving marking requirements. (See Mandatory Reference, ADS 320.3.6)

9. The USAID Assistant Administrator for Management (AA/M) or the Director, Office of Procurement, Bureau of Management (M/OP) is responsible for waiving the requirement for the "Supplier's Certificate and Agreement with the Agency for International Development for Project Commodities and Contract Abstract" (Form AID 1450-4) and for approving contract awards and contract modifications in excess of \$10 million and extensions of one year or more in the terms of contracts in excess of \$10 million. (See E305.5.7a paragraph 11 and E305.5.1f)

#### 305.4 Definitions (See ADS GLOSSARY)

competition advocate  
contracting agency  
cooperating country  
eligible countries  
geographic code  
host country  
local country  
procurement executive  
reasonable cost or price  
results package

#### 305.5 POLICY

The statements contained within the .5 section of this ADS chapter are the official Agency policies and corresponding essential procedures.

##### 305.5.1 USAID APPROVALS OF CONTRACTING STEPS

As financier of host country procurement transactions, USAID reserves in its grant agreements and ILs the right of prior approval of the most critical steps in the normal contracting process in order to assure that they shall be undertaken in compliance with specific provisions of the FAA and USAID policies governing USAID-financed project procurement. It is, however, USAID policy to be as sparing in its exercise of its rights of prior approval as sound

management of its interest permits. The exercise of USAID approval rights is not to be construed in any case as making USAID a party to a contract.

#### E305.5.1 USAID Approvals of Contracting Steps

Sub-Essential Procedures E305.5.1a through E305.5.1f are the requirements for USAID approval of host country contracting.

##### E305.5.1a Contracts in Excess of \$250,000

When the total contract amount is anticipated to exceed \$250,000 in value, including any local currency, written USAID approval is required for the following:

- 1) Notices to prospective offerors, e.g., Commerce Business Daily notices;
- 2) Lists of prequalified offerors, if any, prior to issuance of the solicitation document;
- 3) Complete solicitation document, prior to issuance;
- 4) The contractor selection method (may be part of approval of solicitation document);
- 5) The selected contractor;
- 6) Any host Contracting Agency decision to terminate negotiations with the highest ranked offeror and to initiate negotiations with the next ranked offeror or to reject all offers;
- 7) The contract, prior to execution;
- 8) Signed contract documents, before financing; and
- 9) Contract administrative actions such as subcontracts, amendments, and change orders, as determined by the Mission and stipulated in an Activity IL.

##### E305.5.1b Use of Cost-Reimbursement Contracts

The use of either cost-reimbursement contracts that are not anticipated to exceed \$250,000 or level of effort, cost-reimbursement contracts, regardless of dollar value, requires specific written USAID approval.

#### E305.5.1c Contracts Not Funded by USAID

USAID may also require that contracts not funded by USAID but having a substantial impact on the activity be approved by USAID. The Results Package and ILs must specify the entities to be involved in contract preparation and administration, and the review and approval procedures.

#### E305.5.1d Additional Approvals

USAID approvals may also be required, at the Mission's discretion for other actions taken by the Contracting Agency during the contracting process. Such additional approval requirements must be set forth in an IL.

#### E305.5.1e Approving Authority

The Mission Director, or the Assistance Objective Team Leader if so designated, is the approving authority for the approvals specified in E305.5.1a, b, c, and d as follows:

1) Authority to approve the steps specified in sections E305.5.1a, paragraph 3), 4), 5), and 6) for contracts expected to exceed \$250,000 is reserved to the Mission Director and may not be redelegated. It may be exercised by an Acting Mission Director.

2) Except as restricted above, approval authority for other approvals in section E305.5.1a and in sections E305.5.1b, c, and d may be redelegated by the Mission Director to the Assistance Objective Team Leader.

#### E305.5.1f USAID/W Approval Requirement

In addition to the above USAID Mission approvals, the Assistant Administrator for Management (AA/M) or the Director, Office of Procurement, Bureau of Management (M/OP) in USAID/W must approve contract awards and contract modifications in excess of \$10 million and extensions of one year or more in the terms of contracts in excess of \$10 million. (See Mandatory Reference, ADS 103.3.10.1 paragraph c.2 and ADS 103.3.10.1 paragraph c.3)

### 305.5.2 COMPETITION

Cooperating country contracts for the procurement of USAID-financed goods and services shall be awarded on the basis of competitive procedures. The type of transaction involved (i.e., procurement of technical or professional services, construction services, or goods) determines the procedures to be used in obtaining competition, such as advertising and the basis of competition (i.e., technical qualifications, price, or both).

#### E305.5.2 Competition

Competition requirements for technical and professional services, construction services, and goods are set forth in this section.



#### E305.5.2a Contracting for Technical and Professional Services

Technical and professional services shall be procured using competitive, technical selection among qualified prospective contractors.

##### 1) Technical Evaluations

Such selection shall be based upon evaluation of the relative merits of technical proposals. The selection of a prospective contractor with whom to negotiate shall be based exclusively on professional qualifications for the activity. Offerors shall be instructed that price is not to be included with the submission of the technical proposals which are evaluated qualitatively, based on the needs of the specific activity. A price proposal shall be requested from the offeror submitting the highest ranked technical proposal and negotiations are conducted concerning both technical and cost proposals. If a satisfactory contract cannot be concluded, the Contracting Agency must, if approved under E305.5.1a paragraph (6) terminate negotiations with that contractor and initiate negotiations with the next ranked offeror.

##### 2) Exceptions

Exceptions to this procedure may be authorized only by the cognizant Regional Assistant Administrator, with the clearance of the Director of Bureau for Management, Office of Procurement (M/OP) or designee and Office of the General Counsel, Assistant General Counsel for Contract and Commodity Management (GC/CCM). The request for the exception must fully explain the procedure to be used in evaluating both the technical and price elements of the proposal.

##### 3) Personal Services

If the services are to be performed personally by an individual, only consideration of a reasonable number of candidates shall be required.

##### 4) Informal solicitation

If the estimated contract value does not exceed \$100,000, negotiation may be undertaken without a formal, written solicitation. However, informal solicitation of several sources is required unless a waiver of competition has been approved pursuant to E305.5.2d. A procurement action must not be broken down into two or more smaller dollar value actions in order to avoid the requirements for competitive procurement. Records must be maintained in the contract file on the informal solicitations made hereunder.

##### 5) Follow-on Contracts for Implementation

If the Contracting Agency wishes to employ, for work related to activity implementation, a contractor who has satisfactorily performed work in connection with the

identification, development, or study of an activity, competitive selection need not be used provided that:

- a. The contractor was initially selected on a competitive basis, and
- b. All competing firms were advised in the Notice in Commerce Business Daily announcing the availability of prequalification questionnaires, if any, and in the Request for Technical Proposals (RFTP) that the Contracting Agency, in the contract for the initial work, reserves the right to contract with the selected contractor for specified subsequent work.

#### E305.5.2b Contracting for Construction Services

Formal competitive bidding among qualified bidders shall be the normal procedure for awarding contracts for construction services. Formal competitive bid procedures include public advertising, issuance of invitations for bids, public opening of sealed bids, evaluation of bids, and award of a contract to the lowest responsive and responsible bidder.

Contracts for construction services may be awarded on the basis of competitive negotiation if the Contracting Agency has failed, after diligent efforts, to secure a contract through formal competitive bid procedures and further use of formal competitive bid procedures clearly would not be productive. The Mission Director must approve the use of competitive negotiation, including the procedures to be followed. (See Mandatory Reference, Country Contracting Handbook for additional information on negotiating contracts)

#### E305.5.2c Contracting for Goods

The competitive procedures required for the procurement of goods normally depends on the size of the transaction.

##### 1) Procurements over \$100,000

Formal competitive bidding shall be the normal procedure for awarding contracts for goods when the estimated cost exceeds \$100,000. Formal competitive bid procedures are listed in E305.5.2b above.

##### 2) Procurements Not Exceeding \$100,000

“Small value” informal procurement procedures may be used when the estimated cost of the procurement does not exceed \$100,000, in lieu of formal bidding procedures; however, a reasonable number of potential suppliers must be solicited for procurements expected to exceed \$2,500, and the procurement must be awarded at a reasonable price. Advertising in the Commerce Business Daily is not required and requests for quotations may be oral. Informal (handwritten) records of quotations must be kept in the procurement file.

##### 3) Procurements Not Exceeding \$2,500



In procurements for goods that do not exceed \$2,500, awards may be made without obtaining competitive quotations so long as:

- a. The Contracting Agency/Procurement Services Agent considers the price reasonable;
- b. Such purchases are distributed equitably between qualified suppliers; and
- c. The awarding official documents these conclusions in the Contracting Agency/Procurement Services Agent's records of the procurement.

#### 4) Approval of Competitive Negotiation

If approved by the Mission Director, an informal competitive procedure (sometimes known as competitive negotiation) may be used for procurements in excess of \$100,000. Informal competitive procedures generally include advertising the availability of the Request for Quotations (RFQ), issuance of the RFQ, receipt and evaluation of offers, negotiation when appropriate, and award of the contract to the offeror submitting the most advantageous offer. However, the procedures may be modified to adapt them to particular circumstances of the procurement, e.g., waiving the advertisement of the RFQ. These procedures may be authorized when:

- a. It is impossible to develop adequate specifications for use in an Invitation for Bids;
- b. Procurement of a proprietary product is justified; and
- c. Adherence to formal competitive procedures would impair activity objectives.

#### 5) Failure of Formal Competitive Bidding

If formal competitive bidding procedures have failed and further use of such procedures would clearly not be productive, a modified informal competitive procedure may be approved by the Mission Director. This modified procedure does not require readvertising the procurement and the RFQ normally incorporates the unsuccessful Invitation for Bids (IFB) by reference.

#### E305.5.2d Waiver of Competition - Negotiation with a Single Source

The Contracting Agency must follow one of the procedures in E305.5.1a-c unless a waiver is approved by USAID to negotiate with a single source. Waivers may be authorized only in one of the following situations and must be supported by a written record of the reasons for negotiation with only the single source.



1) For Any Type of Services or Goods

The following situations may justify the waiver of competition for procurement of any type of services or goods:

- a. Special design or operational requirements require services or goods available from only one source.
- b. The Contracting Agency desires to utilize a contractor previously engaged in the activity for follow-on work and the contractor clearly has special capability by virtue of previous experience in the work, but the contractor was either not selected on a competitive basis or the Contracting Agency did not advise all competing firms that a follow-on contract might result. A waiver on these grounds shall be granted only after careful review of all pertinent facts. (See E305.5.1a para. 5. if the contract for the initial work specified that follow-on work might result.)
- c. The Contracting Agency can demonstrate the existence of any emergency situation in which the requirement for competition would result in unacceptable delay of the activity.
- d. Adherence to competitive procedures would result in the impairment of the objectives of the United States foreign assistance program or would not be in the best interest of the United States.

2) For Technical or Professional Services

A waiver of competition for technical or professional services may be justified if it can be demonstrated that one institution or firm has the unique capability by reason of specialized facilities or of personnel who are recognized as predominant experts in a particular field of services that is required for the activity.

3) For Construction Services

A waiver of competition for procurement of construction services may be justified in either one of the following situations:

- a. The Contracting Agency wishes to utilize the contractor for additional work outside the scope of the original contract and the contractor is still mobilized at the site or for some other reason the contractor is so closely related to the activity that utilization of that contractor would effect a substantial saving of time or money.
- b. Only one bid has been received pursuant to an IFB and the bid is not fully responsive, but the Contracting Agency wishes to negotiate only with that bidder.

#### 4) For Goods

A waiver of competition for procurement of goods may be justified in either one of the following situations:

a. When proprietary procurement is justified and the necessary equipment, materials, or spare parts are available from only one source, taking into account any special requirements such as warranty coverage and the need for in-country service capability.

b. Only one bid has been received pursuant to an IFB and the bid is not fully responsive, but the Contracting Agency wishes to negotiate only with that bidder.

#### E305.5.2e Amendments to Existing Contracts

Approval of an amendment to an existing contract that increases the scope of work or level of effort (i.e., a “new procurement amendment”) is also required. Negotiation with the single source to amend the contract must be justified under one of the criteria in E305.5.1d para. 1-4 and approved by the official who has the authority under E305.5.1f for the estimated amount of the amendment.

#### E305.5.2f USAID/W Approval Authority

A single source, negotiated procurement estimated to exceed \$5 million in value may only be authorized by the cognizant Regional Assistant Administrator. Prior clearance by the USAID Competition Advocate is required for this authorization.

Mission approval authority is as follows:

1) A single source, negotiated procurement estimated to cost \$5 million or less may be approved by the Mission Director.

2) The Mission Director may delegate this approval authority to the Deputy Mission Director only for procurements that are estimated not to exceed \$250,000.

3) For procurements estimated to be in excess of \$250,000, such approval must be based upon the recommendation of the Mission Noncompetitive Review Board, which is composed of at least three senior officers other than the approving officer, e.g., the Deputy Mission Director, the Mission or Regional Legal Advisor, a Contracting Officer, and a senior Project Officer not otherwise involved with the procurement under consideration.

#### 305.5.3 ADVERTISING

Please note that certain of the competition requirements below may be waived. As needed, please discuss the circumstances with USAID in advance.



Cooperating country contracts shall be advertised extensively to promote interest in and competition for USAID-financed procurement requirements in eligible geographic source areas. In particular, advertising shall be directed toward obtaining the maximum benefits of competition from U.S. firms and giving such qualified firms an opportunity to compete for an award.

#### E305.5.3 Advertising

Notices of proposed procurements shall be issued in the USAID Procurement Information Bulletin and/or the Commerce Business Daily of the U.S. Department of Commerce, as set forth below. The notices shall generally concern individual proposed procurements, but for goods, when circumstances permit (i.e., when total quantity, type and size requirements are identified early in the activity life), a “blanket” or “consolidated” type notice may be published. Additionally, if it is accordance with local practice, the Contracting Agency may advertise in local, regional, or international journals, newspapers, etc. that are disseminated in the eligible source area(s), as designated by geographic code.

##### E305.5.3a Advertising for Technical and Professional Services

The notice of availability of prequalification questionnaires, or if prequalification is not used, Requests for Technical Proposals, shall be published in the Commerce Business Daily unless:

- 1) The services are to be performed personally by a single individual;
- 2) The contract value is estimated to be under \$100,000; or
- 3) Competition has been waived.

(See Mandatory Reference: Country Contracting Handbook, Ch. 1, Att 1M, on preparation and transmittal procedures for the notice)

For procurement service contracts in which the fee for the services is expected to be in excess of \$25,000, notice of the proposed procurement shall be published in the USAID Procurement Information Bulletin.

##### E305.5.3b Advertising for Construction Services

The notice of availability of prequalification questionnaires or, if prequalification is not used, Invitations for Bids shall be published in the Commerce Business Daily unless:

- 1) The contract value is under \$500,000, in which case publication in the Commerce Business Daily is not required, but other advertising in local, regional, or international journals, newspapers, etc., and otherwise in accordance with local practice must be used;



- 2) Competitive negotiation has been authorized; or
- 3) Competition has been waived.

(See Mandatory Reference: Country Contracting Handbook, Ch. 2, Att 2B, on preparation and transmittal procedures for the notice)

#### E305.5.3c Advertising for Goods

For procurements estimated to exceed \$25,000, the notice of availability of Invitations for Bids, Requests for Quotations, or if prequalification is used, prequalification questionnaires shall be published by the Office of Procurement in the USAID Procurement Information Bulletin. If the estimated value of the contract exceeds \$100,000, the notice shall also be published in the Commerce Business Daily, unless:

- 1) The use of modified informal competitive procedure, authorized pursuant to E305.5.2c para. 4, so specifies; or

- 2) Competition has been waived (See E305.5.1d).

(See Mandatory Reference: Country Contracting Handbook, Ch. 3, Att 3C, on preparation and transmittal procedures for the notice.)

#### E305.5.3d Waivers of Advertisement for Invitations for Bids or Requests for Proposals

The requirement that a notice of availability of an IFB, RFTP, RFQ, or prequalification questionnaire be publicized in the Commerce Business Daily, the USAID Procurement Information Bulletin, or other media, in accordance with local practice, may be waived by the Mission Director to avoid serious delay in activity implementation, provided that efforts shall in any event be made to secure proposals, bids, or offers from a reasonable number of potential contractors or suppliers.

#### 305.5.4 COST PLUS PERCENTAGE OF COST PROHIBITION

USAID shall not finance a contract in which the fee or profit (however described) increases without limitation as the cost of the contract increases (cost-plus-percentage-of-cost contract); neither shall USAID finance engineering services contracts, if the price is set as a percentage of the actual construction cost of the related facility. This policy is not subject to waiver.

#### E305.5.4 Cost Plus Percentage of Cost Prohibition - N/A

#### 305.5.5 NATIONALITY AND SOURCE OF GOODS AND SERVICES, INCLUDING DELIVERY SERVICES

Host country contracting is subject to nationality, source, and cargo preference policies in ADS 310, 311, 314, and 315. (See Mandatory References, ADS 310, 311, 314, and 315)

Please note the language in the Amplified Program Description, Attachment 1, regarding the authorized source, origin and nationality for procurements under this IL.

#### 305.5.6 OTHER FACTORS AFFECTING THE ELIGIBILITY OF FIRMS AND COMMODITIES

Host country contracting is subject to eligibility policies in Chapters 312 and 313. (See Mandatory References, ADS 312 and 313)

E305.5.6 Other Factors Affecting the Eligibility of Firms and Commodities - N/A

#### 305.5.7 MANDATORY CONTRACT REQUIREMENTS AND CLAUSES

The requirements and clauses listed in E305.5.7 shall be incorporated into each country contract, as appropriate.

#### E305.5.7 Mandatory Contract Requirements and Clauses

The mandatory contract requirements and clauses referenced in this section must be included in every USAID-financed contract under the conditions discussed below. (See Mandatory Reference, Country Contracting Handbook for optional contract clauses and sample contract)

#### E305.5.7a For All Types of Services and Goods

The following clauses must be included in all host country contracts except as provided for in this subsection:

##### 1) Legal Effect of USAID Approvals and Decisions

USAID requires the reservation of certain approval rights with respect to the contract but must not incur legal liability by reason of the exercise of those rights. The following clause must be included verbatim in each contract in excess of \$2500:

“The parties hereto understand that the contract has reserved to USAID certain rights such as, but not limited to, the right to approve the terms of this contract, the Contractor, and any or all plans, reports, specifications, subcontracts, bid documents, drawings, or other documents related to this contract and the project of which it is part. The parties hereto further understand and agree that USAID, in reserving any or all of the foregoing approval



rights, has acted solely as a financing entity to assure the proper use of United States Government funds, and that any decision by USAID to exercise or refrain from exercising these approval rights shall be made as a financier in the course of financing this project and shall not be construed as making USAID a party to the contract. The parties hereto understand and agree that USAID may, from time to time, exercise the foregoing approval rights, or discuss matters related to these rights and the project with the parties jointly or separately, without thereby incurring any responsibility or liability to the parties jointly or to any of them. Any approval (or failure to disapprove) by USAID shall not bar the Government or USAID from asserting any right, or relieve the Contractor of any liability which the Contractor might otherwise have to the Government or USAID.”

Though it does not itself reserve approvals; it does recognize USAID’s role as the financing entity and protects USAID against exposure to liability.

## 2) Nationality and Source

Unless it is with an individual or no more than \$2500 in value, the contract, must state the nationality and source requirements for subcontractors and goods, by listing the geographic code authorized by the agreement or a waiver. (See 305.5.3.)

Please note the language in the Amplified Program Description, Attachment 1, regarding the authorized source, origin and nationality for procurements under this IL.

## 3) Host Country Taxes

The contract must contain a clause that applies the exemption of USAID funds from identifiable taxes of the host country and its political subdivisions. (See Mandatory Reference: Country Contracting Handbook; Ch. 1, Sect 4.3.18 and 5.18; Ch. 2, Sect 4.7.2.2.g and Att 2S, Clause 79; and Ch. 3, Sect 4.1.6.9 and Att 3N, Clause 10)

## 4) Worker’s Compensation Insurance

Worker’s compensation insurance must be provided under all services contracts and contracts involving incidental services that are financed by USAID. All contracts involving performance outside the United States must provide for such coverage as required by the Defense Base Act (42 USC 1651, et seq.) unless a waiver is obtained from the U.S. Department of Labor. This clause is discussed in detail in Mandatory Reference: Country Contracting Handbook; Ch. 1, Sect 4.3.41; Ch. 2, Sect 4.7.2.2.e and Att 2S, Clause 77; and Ch. 3, Sect 4.1.6.22 and Att 3N, Clause 22. (See Mandatory Reference: Country Contracting Handbook; Ch. 1, Sect 4.3.41; Ch. 2, Sect 4.7.2.2.e and Att 2S, Clause 77; and Ch. 3, Sect 4.1.6.22 and Att 3N, Clause 22)

Defense Base Act insurance coverage is required for employees of contractors (and their subcontractors) unless a waiver has been obtained from the U.S. Department of Labor (See FAR 28.305). Blanket Waivers from Defense Base Act insurance requirements have been



issued by the Department of Labor for foreign nationals in over 100 countries in which USAID has or had programs, including Pakistan. Foreign national employees covered by this waiver are exempt from the requirement to secure Defense Base Act Insurance but must be provided worker's compensation benefits as required by local law or custom. However, the waivers do not apply to any employee who is: (a) a citizen of the United States; (b) a resident of the United States; or, (c) hired in the United States.

#### 5) Equal Employment Opportunity

A contract with a U.S. firm must include a clause requiring the contractor to be in compliance with its equal employment opportunity obligations under Executive Order 11246, as amended, and regulations and orders issued thereunder. This requirement may be waived only by the USAID Administrator. (See Mandatory Reference: Country Contracting Handbook, Ch. 1, Sect 4.3.39 and 5.39; Ch. 2, Sect 4.7.2.2.j and Att 2S, Clause 82; Ch. 3, Sect 4.1.6.29 and Att 3N, Clause 29)

#### 6) Disposition of Personal Property in the Cooperating Country

The contractor's employees, the contractor (if the contract is with an individual), and family members thereof shall not be permitted to retain profits from the disposition of personal property that was acquired in or was imported into the Cooperating Country and was exempted from import restrictions, customs duties, or taxes by virtue of the individual's status under an USAID-financed contract. If there is provision for such exemption, the contract must contain a clause which restricts the disposition of such personal property in accordance with the rules contained in 22 CFR Part 136 to the extent that these rules are applicable to the employees of U.S. Government Contractors in the Cooperating Country. (See Mandatory Reference, 22 CFR 136 and Country Contracting Handbook; Ch. 1, Sect 4.3.28 and 5.28; and Ch. 2, Sect 4.7.2.2.i and Att 2S Clause 81)

#### 7) Air Travel and Transportation

U.S. Government statute requires the use of U.S. flag air carriers for all USAID grant-financed international air travel and transportation unless such service is not available. When U.S. flag air carriers are not available, any Code 935 flag air carrier may be used. The language defining "available" and "unavailable" carriers in Sample Contract Format (Section 5.23) must be used verbatim in grant-financed country contracts.

#### 8) Metric Specifications

Country contracting must adhere to the metric policies in ADS 323. (See Mandatory Reference, ADS 323)

#### 9) Language

Contracts and other documents submitted to USAID shall be written in English unless USAID otherwise agrees. Notices and solicitations to be published and/or

disseminated in the United States shall be prepared in English in any event. If contracts and other documents are prepared or translated into more than one language, the English edition shall prevail in the event of inconsistencies between the editions.

#### 10) Settlement of Disputes

The contract must contain a clause that specifies impartial and effective procedures for the settlement of disputes that arise from the performance of the contract. The clause and the permissible modifications to it are discussed in Mandatory Reference: Country Contracting Handbook; Ch. 1, Sect 4.3.27 and 5.27; Ch. 2, Sect 4.7.2.2.h and Att 2R, Clause 78; Ch. 3, Sect 4.1.15 and Att 3N, Clause 15. (See Mandatory Reference: Country Contracting Handbook; Ch. 1, Sect 4.3.27 and 5.27; Ch. 2, Sect 4.7.2.2.h and Att 2S, Clause 78; Ch. 3, Sect 4.1 and Att 3N, Clause 15)

#### 11) Documentation for Payment

a. For each request for payment, the contract must require the contractor to submit appropriate and complete documentation, including (for services) the "Contractor's Certificate and Agreement with the Agency for International Development/Invoice and Contract Abstract" (Form AID 1440-3), (See Mandatory Reference: Country Contracting Handbook, Ch. 1, Att 1S and Ch. 2, Att 2S, Clause 78) and/or (for goods) the "Supplier's Certificate and Agreement with the Agency for International Development for Project Commodities and Contract Abstract" (Form AID 1450-4), (see Mandatory Reference: Country Contracting Handbook, Ch. 3, Att 3B), executed in accordance with instructions thereon.

b. In a contract for goods, the requirement for the certificate applies only if the contract exceeds \$2500.

c. This requirement may be waived only by the Director, Office of Procurement, Bureau of Management (M/OP), with concurrence of General Counsel (GC).

#### 12) Audit and Records

Contracts (for goods: only those in excess of \$2500) must contain an audit and record-keeping clause. (See Mandatory Reference, Country Contracting Handbook, Ch. 1, Sect 4.3.18 and 5.18)

#### 13) Corrupt Practices

Contracts (for goods: only those in excess of \$2500) must contain a contract clause on corrupt practices. (See Mandatory Reference, Country Contracting Handbook, Ch. 1, Sect 2.12.12, 4.2.1.q, 4.3.47, and 5.47; Ch. 2, Sect 2.11.12, 4.7.2.2.i, Att 2J.13, and Att 2S, Clause 84; and Ch. 3, Sect 2.13.12, 4.1.6.35, Att 3H.12(g), and Att 3N, Clause 35)



E305.5.7b For Professional and Technical Services

1) Participant Training

When a contract provides for participant training, i.e., the training of non-U.S. nationals outside their home countries, the contract must include a clause which incorporates into the contract, by reference, ADS 253, "Training for Development Impact", and requires the contractor to follow the provisions of that chapter and supplementary references. (See Mandatory Reference: Country Contracting Handbook, Ch. 1, Sect 4.3.44 and 5.44 and ADS 253)

2) Other

There are other clauses, discussed in Reference: Country Contracting Handbook, Ch. 1, Sect 4.3, which are sound contracting practice but not mandatory.

E305.5.7c For Construction Services

1) Marking

USAID requires that job sites be identified to show that the activity is financed by the United States Government. If compliance with marking requirements is impractical, the Regional Assistant Administrator or delegate may waive the requirement, after consultation with the Office of Procurement (M/OP). Mission Directors may waive the marking requirement, or authorize the removal of emblems, on a finding that the appearance of the emblems would produce adverse reactions in the host country. (See Mandatory References, Chapter 320 and Country Contracting Handbook, Ch. 2, Att 2S, Clause 78)

2) Other

There are other clauses, discussed in Mandatory Reference, Country Contracting Handbook, Ch. 2, Sect 4.7, which are sound contracting practice but not required on a mandatory basis. (See Mandatory Reference, Country Contracting Handbook, Ch. 2, Sect 4.7)

E305.5.7d For Goods

The following clauses must be included in contracts for goods:

1) Marking

USAID requires that goods be identified to show that the United States Government finances the activity. If compliance with marking requirements is impractical, the Regional Assistant Administrator or delegate may waive the requirement, after consultation with the Office of Procurement (M/OP). Mission Directors may waive the marking requirement, or authorize the removal of emblems, on a finding that the appearance of the emblems would



produce adverse reactions in the host country. (See Mandatory References, Chapter 320 and Country Contracting Handbook, Ch. 3, Att 3N, Clause 16)

## 2) Vesting of Title and Diversion Rights

The contract must include a clause allowing USAID to take title to commodities and divert shipment, pursuant to the terms of the Activity Agreement. (See Mandatory Reference, Country Contracting Handbook Ch. 3, Att 3N, Clause 30)

## 3) Other

There are other clauses, discussed in Mandatory Reference: Country Contracting Handbook, Ch. 3, Sect 4.1, which are sound contracting practice but not required on a mandatory basis. (See Mandatory Reference: Country Contracting Handbook, Ch. 3, Sect 4.1)

### 305.5.8 AUDITING AND CONTRACT CLOSEOUT PROVISIONS

Requirements for audit and closeout of contracts are set forth in this section.

#### 305.5.8a COST-REIMBURSABLE CONTRACTS AND SUBCONTRACTS OVER \$300,000

Provisions must be made for the proper audit of cost-reimbursable contracts and subcontracts in excess of \$300,000, including the following as necessary: setting aside activity funds to cover the cost of the audit, selection of the auditing entity in accordance with the guidance in Mandatory Reference, Ch. 1, 3.8, and providing for the finalization of provisional overhead rates annually.

#### 305.5.8b OTHER AUDIT REQUIREMENTS

Cost-reimbursable items in contracts and subcontracts that do not exceed \$300,000 and contract requirements such as source of goods and use of U.S.-flag air carriers shall be audited when there is basis for questioning contractor representations. (See Mandatory Reference, Country Contracting Handbook, Ch. 1, 3.8)

#### 305.5.8c CONTRACT CLOSEOUT

All contracts shall be closed out in an orderly fashion upon the contractor's satisfactory completion of the work. (See Mandatory Reference, Country Contracting Handbook, Ch. 1, 3.9.)

**CLEARANCE PAGE** for Implementation Letter No. MLK-01: Malakand Reconstruction and Recovery Program

	<b>Signature</b>	<b>Date</b>
Peter Duffy FATA/NWFP GDO		<u>10/24/09</u>
Tom Kress Program Officer		<u>12/16/09</u>
Rebekah Eubanks Regional Legal Advisor		<u>12/16/09</u>
Kristine Smathers Controller		<u>12/16/09</u>
Ed Birgells Regional Director FATA/NWFP		<u>12/16/2009</u>
Robert Wilson Mission Director		<u>12/16/09</u>